

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA 06-1128

March 7, 2007

MANDY BOLIN
APPELLANT

AN APPEAL FROM SEBASTIAN COUNTY
CIRCUIT COURT [JV03-568]

V.

HON. M. MARK HEWETT, JUDGE

ARKANSAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES
APPELLEE

AFFIRMED

Mandy Bolin appeals from an order terminating her parental rights with regard to her five children: D.N.B., d.o.b. 3/28/97; S.B., d.o.b. 4/19/98; D.V.B., d.o.b. 6/28/99; I.S., d.o.b. 12/14/00; and C.S., d.o.b. 3/21/02. Bolin argues that the trial court erred in finding that 1) a statutory ground supporting termination was proven and that it was in the children's best interest to terminate her parental rights; 2) appellee Arkansas Department of Health and Human Services (ADHHS) made reasonable efforts to provide reunification services; 3) an appropriate permanency plan exists and that the children are likely to be adopted. We find no error and affirm the termination order.

Appellee was initially involved with Bolin's family in July-September 2003, when the agency received reports that Stephen Schwab (C.S.'s and I.S.'s father) had sexually molested Bolin's children.¹ Appellee removed Bolin's children from her custody on October 10, 2003, after it learned that Bolin allowed Schwab to move back into the home. The children were

¹S.B. was the only child identified as receiving counseling for sexual abuse.

determined to be in immediate danger of severe maltreatment. They were subsequently adjudicated to be dependent-neglected.

The trial court ordered reunification services. Bolin was instructed to complete parenting classes; to submit to a psychological evaluation and complete any counseling recommended; and to obtain and maintain appropriate housing and income sufficient to support her children. She was also ordered to submit to a drug/alcohol assessment.

Appellee provided foster care, therapeutic foster care, parenting classes, medical treatment and counseling for the children, transportation assistance, a drug/alcohol assessment, visitation, a psychological evaluation, cash assistance, and budgeting assistance. As the case progressed, Bolin complied with part of her case plan but she never obtained stable housing, never exercised regular visitation, never completed family counseling, failed to follow-up on the treatment advised by her psychologist, withheld critical information during her drug/alcohol assessment about her prescription drug usage, and failed to demonstrate financial stability.

Appellee filed a petition to terminate on November 29, 2005, more than two years after the children were removed from the home. The termination hearing was held on May 16, 2006. In an order dated July 19, 2006, the trial court terminated Bolin's parental rights to each of her children.

I. Termination

Bolin first argues that the trial court erred in finding that a statutory ground warranted termination and in finding that termination was in the best interests of the children. A circuit court may terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile, finds by clear and convincing evidence that termination is in the best interest of the child, finds that the child would be potentially harmed by returning custody to the parent, and finds that at least one statutory ground for termination exists. *See*

generally Ark. Code Ann. § 9-27-341(b)(Supp. 2005).

Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *See Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). When the burden of proving a disputed fact is by clear and convincing evidence, the inquiry on appeal is whether the trial court's finding is clearly erroneous. *See Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Camarillo-Cox, supra*. We review an appeal from a termination order *de novo*, giving due regard to the opportunity of the trial court to judge the credibility of witnesses. *Camarillo-Cox, supra*.

In this case, pursuant to § 9-27-341(b)(3)(A), the trial court found that further contact with Bolin constituted a great risk of harm to the children, that the children were readily adoptable, and that termination was in their best interests. In addition, pursuant to § 9-27-341(b)(3)(B)(i)(a), the court determined that the children had been out of the home for more than twelve months, and that, despite meaningful efforts by appellee, Bolin failed to remedy the conditions which caused removal. We hold that the trial court did not err in terminating Bolin's parental rights.

Bolin's efforts in this case, at best, were sporadic. While she blames much of her failure to comply with her case plan on appellee, the testimony of Bolin, Bolin's sole caseworker during the entire case, and the ADHHS aide, amply demonstrate Bolin's failure to address the problems that were within *her* control. The court noted in its February 15, 2005 review order that the main obstacle to reunification was Bolin's inability to obtain adequate housing for herself and her children, which is a proper factor for the trial court to consider when terminating parental rights. *See Trout v. Ark. Dep't of Human Servs.*, 359

Ark. 283, 197 S.W.3d 486 (2004).

Here, Bolin failed to obtain a stable home of her own; she admitted that she had not independently maintained a home since the children were taken into foster care. She consistently relied on others for housing, lied to her caseworker about her housing situation and her relationships with her male roommates, and moved five times within the six-month period preceding the termination hearing.

The record shows that Bolin moved into the home of a married felon one month before the termination hearing. She is also married but admitted that she did not know the man well before she moved in with him. The man has an admitted history of short-term relationships with women and admitted that he has no intention of marrying Bolin. Moreover, he was uncooperative with the caseworker when she attempted to determine whether his home was appropriate for Bolin's children. Further, the caseworker, Tina May, testified that the home in which Bolin lived was not appropriate because it did not have enough bedrooms for all of Bolin's children.

Bolin also failed to consistently exercise visitation when it was regularly scheduled; she ultimately missed more than half of the ninety visitations that were scheduled. At one point, she moved out of state and did not visit her children for six months. Although Bolin completed parenting classes, she did not apply what she had learned during the visitation that she attended. Bolin required frequent redirection from the caseworker or aide when visiting her children. She also argued with the caseworker during visitation. When Bolin attempted to take care of all five children on her own during visitation, she became frustrated and often complained of migraines. She was also observed by the caseworker to be groggy during visitation and actually fell asleep during one visitation; Bolin admitted that was due to the prescription medications that she took.

Further, Bolin failed to demonstrate that she can manage her finances to support her

children, yet she refused the budgeting assistance offered by appellee. She also failed to complete family counseling and to follow the recommendations of her psychological examiner, who suggested that her medications be checked because she was groggy during a session. Bolin was thereafter referred to a doctor for follow-up, but attended only one or two sessions with that doctor. While she submitted to a subsequent drug/alcohol assessment, in which the counselor did not recommend follow-up drug treatment, the trial court determined that the assessment was invalid because Bolin had not been forthcoming about her prescription drug usage. Finally, Bolin had criminal charges pending at the time of the termination hearing for theft of her former roommate's credit card and medication.

On these facts, appellee provided ample proof that Bolin's partial compliance did not warrant continuation of this case. The purpose of a case plan is to offer services that render the parent capable of taking care of her children. *Wright v. Arkansas Dept. of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). May testified that there were no other services that ADHHS could offer Bolin. Here, although Bolin complied with some requirements of her case plan, it cannot be said that the trial court erred in concluding, in essence, that she manifested the incapacity or lack of desire to care for her children.

Clearly, termination was in the best interests of the children. At the time of the hearing, the children's ages were as follows: C.S. was four; I.S. was five; D.V.B. was six; S.B. was eight; and D.N.B. was nine. I.S. and C.S. were in regular foster care. The other three children remained in therapeutic foster care with no expected discharge date. All of the children had been out of Bolin's care for approximately two-and-one-half years. Given that all of the children were nine years of age or younger, the approximate two-and-one-half years that they had been out of Bolin's custody represented a significant portion of their lives (from nearly one-fourth to one-half). The evidence presented amply demonstrated that reunification could not be accomplished within a reasonable time from the children's

perspective. *See* Ark. Code Ann. § 9-27-341(a)(3) (Supp 2005). Accordingly, we affirm the termination order.

II. Reasonable Efforts

Bolin also challenges the trial court's finding that ADHHS made reasonable efforts to provide services to reunify the family. Where children have been removed from the home, "reasonable efforts" refers to efforts made by ADHHS to reunify a family and to make it possible for the children to safely return home. Ark. Code Ann. § 9-27-303(46)(A)(i) (Supp. 2005). Bolin maintains that no reasonable efforts for reunification were made because 1) Tina May, the caseworker, felt the primary barrier to reunification was Bolin's alleged addition to painkillers, yet the agency offered no classes or assistance regarding this issue; 2) her lack of visitation was due to ADHHS's failure to schedule visitation. Neither of these arguments has merit.

First, the trial court made it clear that the main reason Bolin's rights were terminated was her failure to maintain a stable home. That is, the trial court did not terminate Bolin's rights based on a finding that she was addicted to prescription drugs. In fact, the sole reference to "drugs" in the trial court's order was its conclusion that the drug/alcohol assessment was invalid due to Bolin's lack of candor, meaning her failure to inform the psychological examiner of her usage of painkillers and muscle relaxers. This, however, is not a finding that her parental rights were being terminated because she was addicted to prescription drugs, but merely indicates yet another failure to comply with the case plan.

In any event, as previously noted, the record shows that ADHHS provided the drug-related services ordered by the court. After the psychological examiner recommended that Bolin's medications be checked, May referred Bolin to Dr. Greg Roberts and telephoned Dr. Roberts to check on Bolin's progress. Dr. Roberts reported to May that Bolin saw him only once or twice, the last time one year before the termination hearing. In addition, ADHHS set

up a drug/alcohol evaluation, which Bolin compromised by not being forthcoming about her prescription drug usage.

Bolin had the affirmative duty to take advantage of the services offered to her by appellee to assist her with any alleged addiction. She failed to do so. Thus, she cannot now claim that appellee failed to offer reasonable services when she failed to take advantage of the services that were offered.

With regard to visitation, it is true that ADHHS encountered difficulty in scheduling visitation for Bolin's five children, who were housed in different counties. To that end, Bolin twice filed petitions for emergency hearings to require ADHHS to set up visitation. However, May testified that all but one of the visitations that were missed due to ADHHS's failure to schedule were rescheduled. Moreover, the failure to schedule visitations was not a unilateral failure on the part of appellee. May had difficulty contacting Bolin because Bolin moved frequently and left numerous invalid contact numbers. Over the two-and-one-half-year pendency of this case, Bolin gave May sixteen telephone numbers that were frequently disconnected.

Even ignoring the one visitation that was not rescheduled, Bolin still missed forty-eight visits, over one-half of the ninety visits scheduled. That ADHHS was remiss in scheduling some visits in no way excuses Bolin from her failure to exercise visitation for the *remainder* that *were* scheduled, especially where she failed to keep the agency apprised of her correct contact information. ADHHS is certainly not to blame for the *six-month period* that Bolin moved out of the state and did not see her children. Again, Bolin cannot complain that ADHHS did not provide reasonable efforts to allow her to exercise visitation when she did not regularly exercise visitation that was, in fact, scheduled. Accordingly, the trial court did not err in finding that appellee provided reasonable efforts to reunify the family.

III. Permanency Plan

Bolin's final argument is that the trial court erred in terminating her parental rights because ADHHS failed to prove that it had an appropriate permanency plan and failed to prove that the children were likely to be adopted, as required by Ark. Code Ann. § 9-27-341(b)(1)(A) and (b)(3)(A)(i). She points to the children's emotional difficulties and relies on the fact that only one child, I.S., had a family that had expressed an interest in adopting him at the time of the hearing.

As an initial matter, the termination statute does not require a trial court to find by clear and convincing evidence that a permanency plan exists. There is no statutory requirement that every factor considered in termination of parental rights action be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *See McFarland v. Arkansas Dep't. of Human Servs.*, 91 Ark. App. 323, __ S.W.3d __ (2005).

Bolin would apparently have us hold that a child is not adoptable unless he is completely healthy or unless a family has expressed an interest in adopting him. However, the mere fact that a child has physical or mental problems does not mean he is not adoptable. *See id.* If that were the rule, then very few children who are removed from their parent's custody could ever be considered adoptable. Indeed, the reasons warranting a child's removal from the home are often the source of emotional or physical harm.

Bolin's argument that ADHHS failed to prove it had an appropriate permanency plan and that the children were adoptable is belied by the evidence in this case. Although I.S. was the only child in whom an interest in adoption had been expressed at the time of the hearing, May was not concerned that the agency would have difficulty in placing the other children in an adoptive home.

The children suffered from various conditions, including ADHD, depression, and developmental delays. However, May explained that ADHD and depression were not

unusual diagnoses, and that I.S.'s and C.S.'s delays were not so severe that they would cause problems in placing the children in adoptive homes. S.B., who is on various medications and sees a psychiatrist, has greater needs, which is unsurprising due to the sexual abuse she suffered. Nonetheless, S.B.'s therapist testified that S.B.'s condition would not prohibit her from being adopted.

In finding that ADHHS had an appropriate permanency plan and that it was likely the children would be adopted, the trial court did not err in relying on the testimony of the caseworker, who had been the caseworker since the first day the children were removed from custody, and in relying on the testimony of S.B.'s therapist, who had treated S.B. for nearly two years.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.